

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency Band )

PR Docket No. 93-144  
RM-8117, RM-8030, RM-8029

TO: The Commission

**COMMENTS OF GTE SERVICE CORPORATION**

GTE Service Corporation ("GTE"), on behalf of its domestic, affiliated service companies, hereby responds to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned matter.<sup>1</sup> GTE is engaged in an ongoing effort to make more efficient use of the spectrum granted to it even as the demand for wireless telecommunications services is ever increasing. The Commission's proposed rule changes would enhance the ability of Specialized Mobile Radio ("SMR") systems to provide interconnected services that are functionally equivalent to those offered and that could be offered by mobile radio common carriers. GTE believes the instant rulemaking will significantly increase the regulatory dichotomy between radio private carriers and radio common carriers, to the general detriment of the latter. Accordingly, GTE urges the FCC to remove that disparity.

<sup>1</sup> Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket 93-144, FCC 93-257 (June 9, 1993) (Notice of Proposed Rulemaking).

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In the *Notice*, the Commission proposes rule changes intended to promote the growth of the SMR industry in the 800 MHz band in light of what the Commission perceives as a "large-scale industry transition to new system technologies and configurations" and the fact that, under the existing regulatory framework, "wide-area SMR applications are so voluminous and complex that they have reduced the efficiency of licensing processing."<sup>2</sup> Specifically, the Commission proposes to establish an "Expanded Mobile Service Provider" ("EMSP") approach to licensing 800 MHz SMR Service ("SMRS") authorizations. Under the proposal, an EMSP would be authorized to construct base stations on its channels anywhere within the Major Trading Area(s) or Basic Trading Area(s) ("MTAs/BTAs")<sup>3</sup> to which it assigned, provided that it protects existing co-channel licensees.<sup>4</sup> As the Commission notes, it has proposed a similar approach to SMR licensees operating in the 900 MHz band.<sup>5</sup>

By this rulemaking, therefore, the SMR industry would be invited to move even further away from the Commission's original intent almost twenty years ago, when the

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<sup>2</sup> *Notice* ¶ 5.

<sup>3</sup> GTE objects to the introduction of the MTA/BTA approach to mobile radio licensing, as proposed in the *Notice*, ¶¶ 14-15. As GTE has explained on several recent occasions, unlike MTAs and BTAs, Metropolitan Statistical Areas and Rural Service Areas are already well-understood in the communications industry and are well defined. *See, e.g.,* Comments of GTE Corporation, Gen. Docket No. 90-314 (filed November 9, 1992) at 32-35; Comments of GTE Service Corporation, CC Docket No. 92-297 (filed March 16, 1993) at 18-19. Moreover, they have proven themselves as appropriate market definitions for the provision of land mobile radio services, and their continued use would facilitate administrative convenience.

<sup>4</sup> *Notice* ¶ 18.

<sup>5</sup> *Id. citing* First Report and Order and Further Notice of Proposed Rulemaking, PR Docket No. 89-553, 8 F.C.C. Rcd 1469, 1480 (1993).

agency had contemplated that SMR systems would primarily provide service within limited local areas.<sup>6</sup> SMR systems are increasingly dissimilar from the Commission's characterization of such operations when the SMRS was established, although they continue to be regulated, then as now, as private carriers freed from the obligations and restrictions of Title II of the Communications Act. When justifying its decision to regulate SMR systems differently than radio common carriers, the Commission noted:

SMR systems . . . are meant to have a fundamentally different application [than common carriers]. These [SMR systems] may only be licensed to provide base station facilities for "dispatch" service. Unlike common carrier services, dispatch systems are not necessarily interconnected with the telephone system, rather, they are usually designed to meet the internal business requirements of their users -- the dispatch of taxicabs or service vehicles, for example. Rules limit what users are eligible for this class of service: and, consistent with its different intended functions, *users in fact employ such systems differently from how common carrier systems are used.*<sup>7</sup>

It is beyond dispute that this description of SMR operations is no longer accurate. An increasing number of SMR systems are wide-area, regional or even nationwide in nature, and the Commission's proposed rules in this rulemaking and the 900 MHz proceeding discussed earlier explicitly would facilitate such coverage. Moreover, for SMR systems, it is more frequently the exception, not the rule to remain non-interconnected with the public switched telephone network. Further, the practical reality is that traditional dispatch services no longer constitute the bulk of the service

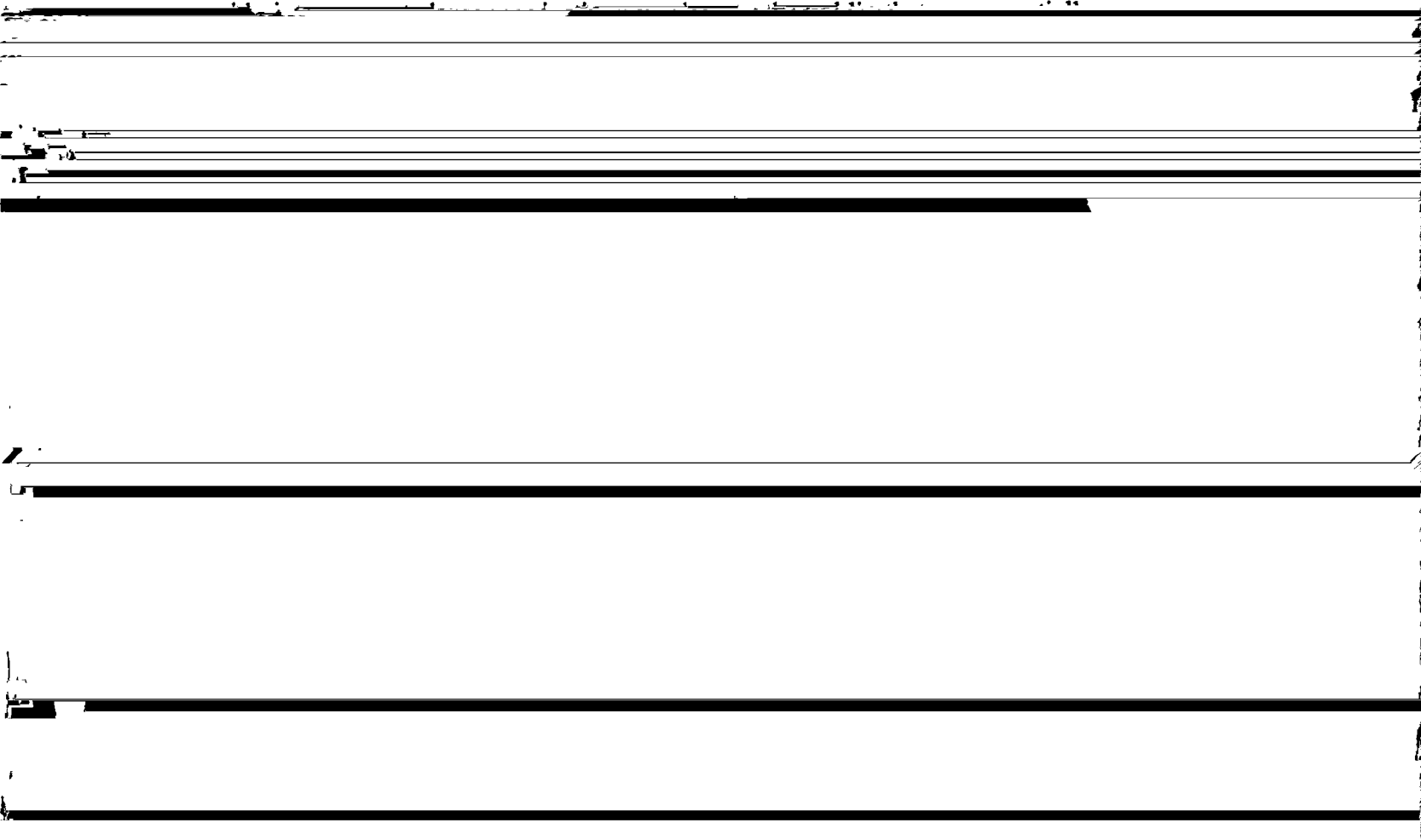
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<sup>6</sup> Memorandum Opinion and Order, Docket No. 18262, 51 F.C.C. 2d 945, 959 (1975), *aff'd* *National Association of Regulatory Utility Commissioners v. FCC*, 525 F. 2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

<sup>7</sup> *Id.*, 51 F.C.C. 2d at 959 (emphasis added).

provided by SMR systems. To the contrary, SMR operators are providing a plethora of services to the public, including interconnected communications service and mobile data communications, which the Commission has stated are permissible under the SMRS rules,<sup>8</sup> and eligible customers of SMR operators now include individuals.<sup>9</sup> In short, in contrast with circumstances that existed in the 1970's and through much of the 1980's, the distinction between the services provided by private carrier SMR systems and radio common carriers is extremely narrow, and GTE submits that it is no longer regulatorily cognizable.

As the Commission is aware, GTE has consistently supported full and fair competition. However, as the Commission promotes the facility of SMR systems to



differently and advantageously regulated private carriers. Accordingly, in conjunction with enhancing the ability of the SMR industry to construct wide-area systems, the FCC should adopt regulatory parity among mobile radio services offered on a for-profit basis so as to ensure a level field of competition.

GTE and others have expressed to the Commission the need for regulatory parity on numerous previous occasions.<sup>10</sup> Indeed, it appears as though Congress recognizes that the time for regulatory parity has come: the legislature is actively considering bills that address the issues of regulatory parity among mobile radio services that are interconnected to the public switched telephone network. A joint committee of the House and Senate is reviewing two versions of the Omnibus Budget Reconciliation Act of 1993 that, *inter alia*, are intended to establish regulatory parity between common and private mobile radio carriers and that have passed their respective chambers. Each bill would amend Section 332 of the Communications Act such that "commercial mobile services" that are now separately regulated as common or private carriers would be regulated in a consistent manner. (Generally speaking, "commercial mobile services" would include mobile services provided for profit that

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<sup>10</sup> Recently, for example, BellSouth Corporation, in its comments on PR Docket No. 92-235, noted that "the Commission must avoid asymmetric regulation" between the "functionally indistinguishable services" of private and common carriers. Comments of BellSouth, PR Docket No. 92-235 (filed May 28, 1993) at 20, 21 ("BellSouth Comments"). Similarly, in its recent comments on the Commission's proposed rules to govern the automatic vehicle monitoring ("AVM") industry, Southwestern Bell Mobile Systems, Inc. ("SBMS"), stated that it supported the FCC's proposal to permit the provision of AVM services on a private carrier basis. SBMS indicated in that context that it supported the application of the principles of regulatory parity between private and common radio carriers. Comments of SBMS, PR Docket 93-61 (filed June 29, 1993).

make interconnected service available to the public, or a substantial portion of the public.<sup>11)</sup> GTE would welcome such legislation.

If either of the bills is passed in its current form, the FCC would have the authority to determine who would be included in the definition of a "commercial mobile service provider." GTE submits that, pursuant to these prospective amendments to the Communications Act, any operator of a wide-area, interconnected SMR system, including EMSPs, should be treated as a commercial mobile services provider.<sup>12</sup> In that way, services provided on a similar basis will not suffer from a regulatory disparity that can only serve to undermine the benefits of competition because it essentially reduces them. Even if the pending amendments mandating regulatory parity are not adopted, the Commission has the discretion and authority to ensure regulatory parity, by requiring interconnected SMR systems to be regulated like common carrier systems<sup>13</sup> or to permit radio common carriers to provide certain specialized services (that do not include resale of interconnected telephone service) on an incidental or

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<sup>11</sup> There are slight differences in the language of the House and Senate bills.

<sup>12</sup> The bills under consideration would both amend Section 332(c) of the Communications Act to give the Commission the discretion to eliminate the prohibition on the provision of dispatch services that currently applies to radio common carriers. See 47 U.S.C. Sec. 332(c). GTE urges the Commission to utilize that discretion, in the event the legislation passes, promptly to institute a rulemaking to remove this artificial restriction on the services that a mobile common carrier may provide. Common carrier dispatch service should be permitted on an incidental or auxiliary basis.

<sup>13</sup> See *NARUC v. FCC*, 525 F.2d 630, 644 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976) ("A particular system is a common carrier by virtue of its functions, rather than because it is declared to be so").

auxiliary basis as private carriers.<sup>14</sup> GTE submits that the Commission, in the interests of competition and fairness, should take such action.

The Commission believes that the 800 MHz SMRS industry would benefit from a regulatory approach to licensing that would facilitate the implementation of wide area systems with greater ease than the current rules. Any such action, if taken, should be made consistent with the principles of regulatory parity among common and private carriers providing similar or identical services, in order to keep the playing field level. Only in this way will the American public have the full benefit of competition.

Respectfully submitted,

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on behalf of its domestic, affiliated  
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<sup>14</sup> See Petition for Rulemaking of Telocator, RM-7823 (filed September 4, 1991) (seeking amendments to the Commission's Rules to enhance the ability of cellular carriers to provide auxiliary and non-common carrier services). Furthermore, analogous to its call for regulatory parity, GTE supports elimination of the wireline exclusion from eligibility to hold SMR licenses. See Comments of GTE Service Corporation, PR Docket No. 92-235 (filed May 28, 1993) at 4-5; see also *BellSouth Comments*, *supra*, at 5-19.